COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 747 of 2001

U.P. State Road Transport Corporation. …… **Appellant.**

Versus

Himanshu and others. ….. **Respondents.**

Mr. A.N. Sharma, learned counsel for the appellant.

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred by the U.P.State Road Transport Corporation under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 15-3-2001, passed in M.A.C. No. 204 of 1999, Himanshu and another Vs. U.P.S.R.T.C and another, by the Motor Accident Claims Tribunal/ District Judge Udham Singh Nagar ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum Rs. 2,33,400/- along with interest @ 10% per annum in favour of the claimants as against the Opposite Party No.2-appellant, as mentioned in the impugned judgment and award. Aggrieved, the appellant-U.P.S.R.T.C. has assailed the impugned judgment and award mainly on the ground that the findings are not based on evidence and income of the deceased has not been properly worked out while assessing the quantum of award.

We have heard the learned counsel for the appellant at length and have carefully examined the entire material as well as the impugned judgment and award available before us.

The learned counsel for the appellant has submitted that the claimants have failed to produce documentary evidence so as to indicate the income of the deceased from the agricultural

produce and the appellants could not prove the income before the learned Tribunal by filing Khasara and Khatauni in the name of the deceased. According to the learned counsel for the appellant there is no finding as to what was the basis for holding agricultural income of the deceased on the record, rather agricultural income, if any, has not been affected on account of death of deceased mother of the claimant-respondents, therefore, the findings recorded by the learned Tribunal are erroneous. It has been contended that no evidence was led to prove the income, except the oral statement of the uncle of the claimants, Indra Lal, P.W.1.

From a close scrutiny of the entire evidence on record, we find that the learned Tribunal has relied on the evidence of Indra Lal, P.W. 1, who had stated that the deceased had 2,1/2 acres of land, from which she used to earn Rs. 50,000/- per annum. His brother (husband of the deceased) was in service, who was getting Rs. 6,000/- per month as salary. As her husband was in service, therefore, she was engaged in agricultural work and was earning from that land. In the claim petition, the claimant-respondents have mentioned that the claimants had income of Rs. 25,000/- per annum from the agricultural and income worth Rs. 15,000/- from stitching work etc. In that context, the learned Tribunal has found that no evidence was led to this effect. On this basis, the Tribunal has determined the monthly income of the deceased at Rs. 2100/- and deducted 1/3rd amount as the personal expenses of the deceased and the rest was to be given to family members-dependents. Accordingly, on the basis of income worth Rs. 2100/- per month, the Tribunal has calculated the annual loss of income as Rs. 16,800/- and keeping in view the age of the deceased to be 40 years, applied the multiplier of 13 and determined the compensation at Rs, 2,18,400/-. In addition, the Tribunal has awarded Rs. 15,000/- towards mental agony to the claimants on account of death of their mother. Thus, the Tribunal has awarded total compensation of Rs.2,33,400/-.

Learned counsel for the appellant submitted that no evidence was adduced by filing Khasara and Khatauni, that the deceased was having agricultural land in her own name; but the Tribunal has also found that it was the agricultural land of the deceased, but even then the income of the deceased has been assessed from agricultural land. On this basis, the learned counsel for the appellant submitted that it was the income of the family and since the land is still there, therefore, that income, if any, remains with the family, therefore, it does not stand to reason as to what has been taken into account for purposes of determination of income of the deceased. We find force in the contention of the learned counsel for the appellant that the income from agriculture, which used to be available to the family is still available after the death of the deceased and that could not have been made the basis for determining the income of the deceased for the purposes of assessing the compensation, as claimed by the claimants, since the claimants are getting the income from the said agricultural land, therefore, we find that except the oral statement of P.W. 1 Indra Lal , there is nothing on record to show that there was any other agricultural land in the name of the deceased. Thus the income of the deceased from agriculture recorded by the Tribunal is erroneous. Since it has been found by the Tribunal that the deceased was a house wife, therefore, she was dependent on the income of her husband. On account of death of her husband, compensation has already been awarded after determining the income of the deceased husband in the Motor Accident Claim Case No. 205 of 1999, which gave rise to A.O. No. 748 of 2001, therefore, we hold that the deceased was not an earning member. She was dependent on her husband. In Clause 6 of Second Schedule appended to Section 163-A of the Act, the notional income of Rs. 15,000/- per annum shall be taken for the purposes of determination of compensation. Since it is the statutory notional income for the purpose of determination of compensation to be paid to the claimants under Section 163-A of the Act, therefore, no deduction can be made towards the expenditure on the deceased

herself. In this case, deduction of 1/3rd is not permissible. The Apex Court in the case of ***"United India Insurance Co. Ltd. etc. etc. Vs. Patricia Jean Mahajan & Ors, etc. etc." (2002(2) Apex Court Judgments, 100 (S.C.)*** while considering the provisions of Second Schedule of the Act, in paragraph 22 has observed that ***"ordinarily while awarding compensation the provisions contained the Second Schedule may be taken as a guide including the multiplier, but there may arise some cases, as one in hand, which may fall in the category having special feature of facts calling for deviation from the multiplier usually applicable."***

As we have held that it is the notional income of the deceased for purpose of determination of compensation under Section 163-A of the Act as the deceased was not having any income of her own, therefore, the question of deduction of 1/3rd towards expenditure on herself does not arise. Admittedly, the age of the deceased was 40 years, therefore, in view of the law laid down by the Apex Court, multiplier, can also be deviated. Accordingly, we apply multiplier of 13 shall be applied on the notional income of Rs. 15,000/- to arrive at the just compensation to be awarded to the claimants in the facts and circumstances of the case. Thus, the amount of compensation comes to 13 x 15,000/- = 1,95,000/-. The Tribunal has awarded Rs. 15,000/- towards loss of love and for mental agony. We are of the opinion that this amount of Rs. 15,000/- is excessive and it is reduced to Rs. 10,000/-(ten thousand). Thus, the total compensation payable to the claimant-respondent no. 1 and 2 comes to Rs. 2,05,000/-. The claimant-respondent nos. 1 and 2 shall also be entitled to get interest **@ 9%** per annum instead of 10% as ordered by the learned Tribunal. To this extent, the impugned judgment and award dated 15.3.2001 shall stand modified.

The appeal is allowed. The judgment and award, under appeal, is modified as observed above. No order as to costs.

Amount, if any, deposited by the appellant in this Court shall be transmitted to the M.A.C.T. concerned. The claimant-respondents shall be at liberty to withdraw the amount, if any.

19-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP